

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK : SPECIAL TERM PART I

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In the Matter of the Application of

PHIL CARUSO, as President of the Patrolmen's
Benevolent Association of the City of New
York, Inc., and the PATROLMEN'S BENEVOLENT
ASSOCIATION OF THE CITY OF NEW YORK, INC.,

Petitioner,

For a Judgment under Article 78 of the Civil
Practice Law and Rules,

Index No. 05411/82

-against-

ARVID ANDERSON, as Chairman and Impartial
Member of the Board of Collective Bargaining,
BOARD OF COLLECTIVE BARGAINING, THE OFFICE OF
COLLECTIVE BARGAINING, BRUCE MC IVER, as
Director of the Office of Municipal Labor
Relations of the City of New York and the
CITY OF NEW YORK,

Respondents.

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SHERMAN, Burton S., J:

In this Article 78 proceeding, the petitioner, the Patrolmen's Benevolent Association (hereinafter "PBA") seeks a judgment partially annulling a decision of respondent Board of Collective Bargaining (hereinafter "Board") which granted in part and denied in part the PBA's request to arbitrate.

The PBA submitted a request to arbitrate two claims which it maintains are arbitrable under the collective bargaining agreement (hereinafter "contract") definition of a grievance. The first claim was to arbitrate a denial of Police Officer John McEnvy's (hereinafter overtime travel allowance, known as a portal to portal payment, in violation of the contract and the Police Department manual.

The Board determined that the PBA's claim for portal to portal payment was an arbitrable grievance under the contract and this portion of the decision is not challenged herein. The Board also determined that the PBA's second claim was not arbitrable finding no nexus between the claim of union discrimination and the filing of the report of grievant's supervisor. The Board based this determination upon the finding that the supervisor's report, alleging grievant's unauthorized absence, concerned only the question of whether the grievant was or was not granted permission to be absent from work on June 28, 1980 and was not attributable in any manner to grievant's attempt to obtain portal to portal payment. In addition, the filing of the report, which the Board determined did not constitute a disciplinary action and therefore not arbitrable under the Police Department manual, was prior in time to the prosecution of the portal to portal grievance and riot in response to any union activity.

The Board has determined that it is the burden of the grievant, where challenged to do so, to show that the contract provisions involved are arguably related to the grievance to be arbitrated. The failure of the PBA to meet this burden has resulted in the Board's determination to deny the arbitrability of petitioner's second claim. This court will not substitute its judgment for that of the Board, as this court does not profess to have the expertise of the Board with regard to New York City's Collective Bargaining Law. The petitioner's conclusory allegation fail to show that the Board's determination was affected by an error of law or was arbitrary and capricious or an abuse of discretion. (Matter of West Irondequoit Teachers Assn. v. Helsby, 35 NY2d 46). Accordingly, the petition is dismissed. The further allegations of the PBA, in this petition, that the grievant was eventually transferred for filing the grievance for portal to portal payment should have been raised in the pro-

ceeding before the Board as such transfer occurred prior to the PBA's request for arbitration. In any event, the Administrative Code §1173-4.3(b) and the New York City Charter §1103 gives the City the absolute right to assign its employees to different locations within a job title and thus the transfer of the grievant is within the managerial powers of the City and does not give rise to an arbitrable grievance. Settle judgment.

Dated: July 29, 1982

J.S.C.